

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD E. SHERRY

Plaintiff,

Case No. 15-14198

Hon. Matthew F. Leitman

v.

ROBERT L. CHIOINI *et al.*,

Defendants.

ORDER ON MOTION HEARING

On February 2, 2016, Defendants filed a Motion to Dismiss Plaintiff's Complaint (the "Motion to Dismiss"). (*See* ECF #15.) Among other things, Defendants sought to have Plaintiff's Complaint dismissed pursuant to Mich. Comp. Laws 450.1495(1) and (2)(c). (*See id.*) Those statutes provide in relevant part that a "court shall dismiss a derivative proceeding if ... a panel of 1 or more disinterested persons appointed by [a] court ... has made a determination in good faith after conducting a reasonable investigation ... that the maintenance of the derivative proceeding is not in the best interests of the corporation." MCL § 450.1495(1)-(2)(c).

The Court held a hearing on the Motion to Dismiss on May 27, 2016. For the reasons stated on the record at the hearing, **IT IS HEREBY ORDERED** that:

- By no later than June 27, 2016, nominal Defendant Rockwell Medical, Inc. (“Rockwell”) shall make available to Plaintiff all materials S. Thomas Weiner (“Weiner”) reviewed in connection with his investigation. Nothing in this Order shall require Rockwell to produce any documents it believes to be protected by the attorney-client privilege. Should any dispute regarding the privilege arise, the parties are directed to meet and confer in good faith in an attempt to resolve the dispute. If the parties cannot resolve their dispute, they shall contact the Court’s case manager, and the Court will promptly schedule a telephonic conference to discuss the issue with the parties.
- By no later than July 29, 2016, Mr. Weiner shall appear for a deposition. The questions at the deposition shall be limited to (1) the reasonableness of Mr. Weiner’s investigation and/or (2) whether Mr. Weiner’s determination that it was not in Rockwell’s best interest to maintain a derivative proceeding was made in good faith. The parties shall inform the Court’s case manager of the date of Mr. Weiner’s deposition.
- Following completion of the deposition, the Court will hold a status conference to discuss next steps in this action.

- In all other respects, the Court takes the Motion to Dismiss under advisement.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: May 31, 2016

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 31, 2016, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(313) 234-5113